

SUPPORTING STATEMENT

A. Justification:

The Commission is requesting a revision to this information collection requirement and is seeking Office of Management and Budget (OMB) approval of certain information collections and third-party disclosures associated with a *2004 Order*¹ as modified by a *2006 Order*² and the *2008 Order*³ in the Commission's "BRS/EBS proceeding." By these actions, the Commission continues its efforts to transform rules and policies governing the licensing of the Educational Broadband Service (EBS) and the Broadband Radio Service (BRS) (collectively, the Services) in the 2495-2690 MHz band.⁴

Proposed requirements that revised this IC :

1. The FCC adopted and released a Fourth Memorandum Opinion and Order (*2008 Order*), FCC 08-83, which proposes to extend and modify existing reporting requirements such that licensees will, pursuant to Section 27.1221(f) of the Commission's rules, be required to provide the geographic coordinates, the height above ground level of the center of radiation for each transmit and receive antenna, and the date transmissions commenced for each of the base stations in its Geographic Service Area (GSA) within 30 days of receipt of a request from a co-channel, neighboring Broadband Radio Service/Educational Broadband Service (BRS/EBS) licensee. This information will be used to prevent harmful interference to licensees' BRS/EBS operations. Since BRS/EBS licensees will be providing this technical information to a third party, the information will not be used by the Commission unless submitted by the parties pursuant to an interference complaint. This additional requirement will add an additional .50 hours per licensee reporting and maintaining records on an average of 250 responses to the

¹ Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 03-66, 19 FCC Rcd 14165, 14169 ¶ 6 (*2004 Order*).

² Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Third Memorandum Opinion and Order and Second Report and Order*, WT Docket No. 03-66, 21 FCC Rcd. 5606 (2006) (*2006 Order*).

³ Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Third Order on Reconsideration and Sixth Memorandum Opinion and Order and Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking and Declaratory Ruling*, WT Docket No. 03-66, WT Docket No. 03-67, WT Docket No. 02-68, IB Docket No. 02-364 and ET Docket No. 00-258 (Released March 20, 2008) (*2008 Order*).

⁴ The two services in the 2500-2690 MHz band, the Instructional Television Fixed Service (ITFS) and the Multichannel Multipoint Distribution Service (MMDS), and the Multipoint Distribution Service (MDS) in the 2150-2162 MHz band were renamed by the Commission in 2004. The ITFS service became the Educational Broadband Service (EBS) and the MMDS and MDS services became the Broadband Radio Service (BRS). See *2004 Order*, 19 FCC Rcd at 14169 ¶ 5.

current information collection burden for wireless service providers. Therefore, the Commission is reporting +122 hours in annual burden (for the new requirement).

2. The Commission is removing the MVPD Opt Out (Waiver Request) provision that was approved by OMB the last time this was submitted to them for approval. This voluntary deadline for filing waiver requests ended on April 30, 2007. Therefore, the Commission is reporting – 3 hours for filing waiver requests and -\$6,668 in annual costs (program changes) for removal of the Opt Out requirement.

Information Collection Requirements That Are Currently Approved by OMB:

The Commission’s actions in this proceeding adopted and released in August 2006 are designed to provide both incumbent licensees and potential new entrants in the 2495-2690 MHz band with greatly enhanced flexibility to encourage the efficient and effective use of spectrum domestically and internationally, and the growth and rapid deployment of innovative and efficient communications technologies and services. Specifically, the Commission provides the opportunity for operators using different technologies and/or services to have access to the same spectrum. Moreover, the Commission facilitates the development of wireless broadband systems in this band that could offer consumers another choice for broadband access -- competing in price and features with existing landline offerings, reaching areas not currently served by landline networks, and offering consumers portability or mobility. In addition, the Commission facilitates use of this band by educational institutions, thereby improving the ability of educators to serve America’s students through wireless technology. Accordingly, through these actions, the Commission makes further progress towards its goal of providing all Americans with universal, affordable access to broadband technology.⁵

The existing information collection requirements are as follows:

- 1) the pre-transition data request (47 CFR § 27.1231(e)), the information collected in the pre-transition data request is necessary to assist the proponent transition the 2500-2690 MHz band from old band plan to the new band plan by relocating licensees. Because EBS licensees will be receiving new equipment that will enable them to continue providing video programming from a new channel location and they are not required to pay their relocation costs, the proponent must gather information that will allow it to determine how and where to move each licensee and the kind of equipment each EBS licensee will receive.
- 2) the transition notice (47 CFR § 27.1231(e)), the information collected in the transition notice is necessary to inform BRS and EBS licensees that the Basic Trade Area (BTA) is being transitioned by the proponent. The transition notice gives licensees the contact information of the proponent.
- 3) the Initiation Plan (47 CFR § 27.1231(f)), and
- 4) the Post-transition notification (47 CFR § 27.1235).

⁵ *Id.*

The Initiation Plan and the Post-transition notifications are collected by the FCC to enable it to assess when transitions have begun and when they have ended. The Commission will collect the Initiation Plan and the Post-transition Notification electronically through our electronic comment and filing system (ECFS) database. The Commission is also collecting information to determine whether licensees have met their performance requirements for the 2500-2690 MHz band. This information will be collected electronically through our Universal Licensing System (ULS) under FCC Form 601. These are one-time only filing requirements.

Statutory authority for this collection is contained in 47 U.S.C. §§ 151, 154(i), 301, 303(f), 303(g), 303(r), 307, 308, 316.

As noted on OMB Form 83-I, this information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

2. This information will be collected by a third-party to verify BRS/EBS licensee interference protection is in compliance with the Commission rules and regulations.

3. Most of this information collection are third-party disclosure requirements (see item 12 for descriptions). We estimate that ninety-five percent of the BRS/EBS licensees could possibly submit this information electronically.

4. The Commission does not impose a similar information collection on respondents and no similar data is available elsewhere.

5. In conformance with the Paperwork Reduction Act of 1995, the Commission is making an effort to minimize the burden on all respondents, regardless of size. This information collection will not have a significant economic impact on a substantial number of small entities.

6. The frequency of reporting will be determined by the BRS/EBS licensees.

7. There are no special circumstances that would cause this information collection to be conducted less frequently.

8. The Commission published the 60-day notice in the Federal Register on May 21, 2008 (73 FR 29514). No comments were received on the notice. A reference to the notice is included in this submission to the OMB.

9. Respondents will not receive any payments or gifts.

10. The revised information collection requirements provide that information provided pursuant to the new requirement shall not be disclosed to additional parties except to the extent necessary to ensure compliance with FCC rules.

11. There are no questions of a sensitive nature.

12. The Commission estimates the burden on respondents as follows:

Existing Burden Hours:

The Commission estimates that there could be 2,500 respondents (10 proponents and 2,490 applicants/licensees) in 2500-2690 MHz Transition bands who will be required to provide supplemental data, either to the Commission or to third parties, that is not currently collected on the FCC Form 601. Approximately 1,500 of the respondents are BRS licensees, from whom we estimate there will be ten proponents, leaving 1,490 BRS licensees. Approximately 1,000 respondents are EBS licensees.

The following is a breakdown of the estimated burden hours along with estimated internal annual-costs to respondents associated with these burden hours. (Estimates for external costs to respondents are shown in Item 13 below.)

a. Pre-Transition Data Request or EBS Self-Transition Notice:

Number of respondents = 2,500.

Number of responses = 2,500 (third-party disclosures)

Number of Hours =

1490 (BRS) responses @ 0.25 hrs./response = 372.5 hrs.
- Internal annual cost = nontechnical staff @ \$35/hr. = \$ 4,345.83

1000 (EBS) responses @ 1 hr. /response = 1,000 hrs.
- Internal annual cost = nontechnical staff @ \$35/hr. = \$11,666.67
- External costs are shown in Item 13

10 (proponent) respondents @ 5 hours to send requests = 50 hrs.
- Internal annual cost = nontechnical staff @ \$35/hr. = \$ 583.33

Total hours for Pre-Transition Data Request or EBS Self-Transition Notice = 1423 hrs.

ANNUAL BURDEN HOURS for Pre-Transition data request or EBS Self-Transition Notice (1,423 hours / 3 years) = **474 hours** (for which the internal annual cost = \$16,595.83)

b. Transition Notice:

Number of respondents = 25 (proponents or BRS self-transitioning licensees)
- approx. one proponent or BRS self-transitioning licensee per each of 493 BTAs

Number of responses = 2475-2490 (third-party disclosures)

Hours per response = 0.25 hrs.

Total hours for the Transition Notice = 623 hrs.
- Internal annual cost = nontechnical staff @ \$35/hr. = \$ 7,262.50

ANNUAL BURDEN HOURS for Transition Notice (623 hours / 3 years) = **208 hours** (for which the internal annual cost = \$ 7,262.50)

c. Initiation (or self-transition) Plan:

Number of respondents = 25 (proponents or self-transitioning licensees)

Number of responses = 493 (reporting)

- approx. one proponent or self-transitioning licensee per each of 493 BTAs files an initiation (or self-transition) plan with FCC

Hours per response = 2.25 hrs. (2 hrs. legal/engineering, 0.25 hr. nontech.)

- *Internal annual cost = engineering and legal staff @ \$200/hr. = \$65,733.33*

- *Internal annual cost = nontechnical staff @ \$35/hr. = \$1,437.92*

Total hours for the Initiation Plan = 1,110 hrs.

ANNUAL BURDEN HOURS for Initiation Plan

(1,110 hours / 3 years) = **370 hours** (for which the internal annual cost = \$67,171.25)

d. Transition Plan:

Number of respondents = 10 (proponents)

Number of responses = 5,000 (reporting; third-party disclosures)

- approx. one proponent per BTA sends Transition Plan to all licensees in the BTA. If a licensee(s) submits a counterproposal(s) that the proponent accepts, the proponent must send the modified Transition Plan to all licensees in the BTA.

- the number of counterproposals that will be made and accepted is unknown; for purposes of the instant submission, we are estimating that, on average, proponents will have to send licensees one original Transition Plan and one modified Transition Plan, *i.e.*, $2490 \times 2 = 4980$, rounded up to 5000).

Hours per response = 3.5 hrs. (3 hrs. legal/engineering, 0.5 hr. nontech.)

- *Internal annual cost = engineering and legal staff @ \$200/hr. = \$1,000,000.00*

- *Internal annual cost = nontechnical staff @ \$35/hr. = \$29,166.67*

Total hours for the Transition Plan (5000 x 3.5 hrs.) = 17,500 hrs.

ANNUAL BURDEN HOURS for Transition Plan

(17,500 hours / 3years) = **5,833 hours** (for which the Internal annual cost = \$1,029,166.67)

e. Post Transition Notification:

Number of respondents = 10 (proponents)

Number of responses = 493 (reporting)

Hours per response: 2 hrs.

- *Internal annual cost = nontechnical staff @ \$35/hr. = \$11,503.33*

Total hours for the Post Transition Notification = 986 hrs.

ANNUAL BURDEN HOURS for Post-Transition Notifications
(986 hours / 3 years) = **329 hours** (for which the internal annual cost = \$11,503.33)

f. Reimbursement Costs of Transitioning:

Number of respondents = 25 (proponents or EBS self-transitioning licensees)

Number of responses = 1,490 (third-party disclosures; recordkeeping)

- approx. one proponent or EBS self-transitioning licensee per BTA sends reimbursement claim to all BRS/commercial licensees in the relevant BTA(s)

Hours per response: 2.25 hrs. (2 hrs. legal/engineering; 0.25 hr. nontech.)

- Internal annual cost = engineering and legal staff @ \$200/hr. = \$198,666.67

- Internal annual cost = nontechnical staff @ \$35/hr. = \$4,345.83

Total hours for Reimbursement Costs of Transitioning = 3,353 hrs.

ANNUAL BURDEN HOURS for Post-Transition Notifications
(3,353 hours / 3 years) = **1,118 hours** (for which the internal annual cost = \$203,012.50)

g. **New Burden added to this IC:**

Section 27.1221(f) requirements:

Number of respondents = 10.

Number of responses = 250 (reporting; recordkeeping)

- Requirement is triggered when licensee seeks technical information from adjacent licensee because of potential interference problem.

Hours per response: .50 hours (engineering).

- Internal annual cost = engineering staff @ \$200/hr. = \$15,000.

Total hours for requirements of section 27.1221(f) = +125 hrs.

ANNUAL BURDEN HOURS for section 27.1221(f):

(375 hours/3 years = **125 hours** (for which the internal annual cost = \$15,000).

Elimination of Burden to this IC:

MVPD Opt Out (Waiver Requests): This is a voluntary requirement that is no longer in effect. The deadline for filing waiver requests was April 30, 2007. That date has since past since the Commission last submitted this IC to OMB for review; therefore, this has resulted in – 3 hours for reporting requirement and -\$6,668 annual cost burden.

Revised Annual Burden Hours:

The revised information collection requirements as stated above (see description of modified/new information in item 1, page 1 of this supporting statement) will add an additional .50 hour per licensee maintaining records on an average of 250 responses to the current information collection burden for wireless service providers. This will change the burden to 2500 entities x 3.334 average hours/response = 8,335 + 250 responses x .50 hours/response = 125 hours **(8,335 + 125 hours = 8,460 hours minus 3 hours for the one-time waiver request that is being eliminated = 8,457 total annual burden hours.**

TOTAL PROPOSED REVISED ANNUAL BURDEN HOURS (474 + 208 + 370 + 5,833 + 329 + 1,118 + 125 = 8,457 hours (for which the internal annual cost = \$1,334,828.67)

13. This revision proposes no new capital and start-up costs nor operational or maintenance costs. The following is a breakdown of the current estimated external cost to respondents (internal cost is shown in Item 12):

- a. Total annualized capital/start-up costs: 0
- b. Total annualized cost request to prepare FCC 601 Main Form Substantial Service Requirement (containing the data required by the collection are: \$0.00).

There is no electronic filing cost to file these applications electronically with the FCC other than the cost of a long distance phone call or Internet access. These applications will be treated as minor modifications that do not require payment of a fee if the required information is submitted without making additional changes to the license.

- c. Additional costs:

Pre-Transition data request:

Number of respondents = 2,500.

Number of responses = 2,500.

Engineering consultants @ \$200/hr. and 4 hrs./response x 1,000 responses = \$800,000.

- We estimate that all 1000 EBS licensees will hire engineering consultants to complete the pre-transition data request.

Cost for Pre-Transition Data Request = \$800,000.

ANNUAL COST for Transition Data Request (\$800,000 / 3) = **\$266,666.**

MVPD Opt Out (Waiver Requests): **This requirement is no longer in effect and is now being removed from this IC.**

Number of respondents = 10

Number of responses = 10 (reporting)

We estimate that 100% of the respondents will hire a law firm to prepare and file a waiver request @ \$200/hr. x 10 hrs x 10 respondents = \$20,000.

Cost for MVPD Opt Out (Waiver Requests) = \$20,000.

ANNUAL COST for MVPD Opt Out (Waiver Requests) (\$20,000 / 3 years) = **-\$6,668.**

TOTAL ANNUAL EXTERNAL COST IS: \$266,666.
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14. There are no costs to the government.

15. The Commission is reporting a + 122 hour program change and a -\$6,668 in annual costs. The program change increase in burden is due to the new requirement described in paragraph one and revised the estimated responses that respondents are now required to report and maintain records. The program change decrease is due to elimination of the voluntary waiver request which sunset on April 30, 2007.

16. The data will not be published for statistical use.

17. We do not seek approval to display the expiration date for OMB approval of the information collection.

18. There are no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods:

This information collection does not use any statistical methods.